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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---------------------|-------------|----------------------|---------------------|------------------|
| 10/810,076 | 03/26/2004 | Robert Duboc | P146-US | 3509 |
| 26148 | 7590 | 10/19/2006 | EXAMINER | |
| REFLECTIVITY, INC. | | | LEWIS, MONICA | |
| 350 POTRERO AVENUE | | | ART UNIT | |
| SUNNYVALE, CA 94085 | | | PAPER NUMBER | |
| | | | 2822 | |

DATE MAILED: 10/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/810,076 | DUBOC ET AL. | |
| | Examiner | Art Unit | |
| | Monica Lewis | 2822 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3 and 5-39 is/are pending in the application.
- 4a) Of the above claim(s) 5-16 and 20-39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3 and 17-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This office action is in response to the amendment filed August 25, 2006.

Drawings

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "122" has been used to designate both tubing and package cover (For Example: See Paragraph 38 and Paragraph 42). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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4. Claims 1 and 17-19 are rejected under 35 U.S.C. 102(e) as being anticipated by Huibers (U.S. Publication No. 2004/0012838).

In regards to claim 1, Huibers discloses the following:

a) a first glass substrate (80) that is transmissive to visible light (For Example: See Figure 10a, Figure 10b, Paragraph 62, Paragraph 80, Page 13 (Claim 16 and Claim 31));

b) a getter material (85a-e) and/or a lubricant material (83a-e) disposed on the first substrate (For Example: See Figure 10a, Figure 10b, Abstract, Paragraph 62, Paragraph 80, Page 13 (Claim 16 and Claim 31));

c) a package enclosing the first glass substrate, the package comprising a second glass substrate (70) (For Example: See Paragraph 84)(Note: Huibers discloses that the upper and lower substrates can comprises the same materials e.g. glass (See Paragraph 62)); and

d) wherein the getter material and/or lubricant material is disposed on a surface of the first glass substrate that faces the second glass substrate (For Example: See Figure 10a, Figure 10b, Abstract, Paragraph 62, Paragraph 80, Page 13 (Claim 16 and Claim 31)).

In regards to claim 17, Huibers discloses the following:

a) comprising a getter (For Example: See Paragraph 80).

In regards to claim 18, Huibers discloses the following:

a) comprising a lubricant (For Example: See Paragraph 80).

In regards to claim 19, Huibers discloses the following:

a) comprising a getter and a lubricant (For Example: See Paragraph 80).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Huibers (U.S. Publication No. 2004/0012838) in view of Ishii (U.S. Patent No. 6,903,860).

In regards to claim 3, Huibers discloses the following:

a) the deflectable element (48a-48c) is a mirror plate that is attached to a hinge (50, 50a, 50b and 50c) formed on the substrate (For Example: See Paragraph 76).

In regards to claim 3, Huibers fails to disclose the following:

a) the mirror plate can rotate on the substrate.

However, Ishii discloses a semiconductor device that has a deflectable element (301) that is a mirror plate that is attached to a hinge (302) formed on the substrate (306) such that the mirror plate can rotate on the substrate (For Example: See Column 7 Lines 60-65). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the semiconductor of Huibers to include a mirror plate that can rotate on the substrate as disclosed in Ishii because it aids in improving the device performance (For Example: See Column 5 Lines 24-52).

Additionally, since Huibers and Ishii are both from the same field of endeavor, the purpose disclosed by Ishii would have been recognized in the pertinent art of Huibers.

Response to Arguments

7. Applicant's arguments filed 8/25/06 have been fully considered but they are not persuasive. Applicant argues that Huibers fails to disclose that "the getter material and/or lubricant is disposed on a surface of the first glass substrate that faces said second glass substrate." However, Huibers does disclose the getter material (85a-e) and/or lubricant material (83a-e) is disposed on a surface of the first glass substrate (80) that faces the second glass substrate (70) (For Example: See Figure 10a, Figure 10b and Paragraph 80). Huibers discloses

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that "lubricant, getter and bonding material are present on the top wafer 80...the lubricant, getter and bonding material could be applied to only the top or bottom wafer or both wafers" (For Example: See Paragraph 80).

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Monica Lewis whose telephone number is 571-272-1838. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zandra Smith can be reached on 571-272-2429. The fax phone number for the organization

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where this application or proceeding is assigned is 571-273-8300 for regular and after final communications.

ML

October 10, 2006

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end.